Sectt. II-87—45,000—15-11-

Development (1936) Department

MB SERIES.

G.O. No. 1802

DATED 13/8/1936.

[Despatch Abstract.]

RDW. 4246 I

25.9.36

FISHERIES **DEPARTMENT.**

Received 25 SEP 1936 19 *Registered* 19

Subject.

Tank-Fisheries - Kotekere Tank - South Kanara District - illicit fishing offence

ENCLOSURES.
No.
Spare copies

No. 2411-I/35

Station Madras., *Dated the* 24th September, 1936.

From (Name) Dr.B.Sundara Raj, M.A., Ph.D.,
(Designation) Director of Fisheries.

To The Secretary to the Government of Madras,
DEVELOPMENT Department.

Sir,

I enclose copies of correspondence noted in the margin*.

1. Offence report from the Sub Inspector of Fisheries, Gangoli Fish-curing yard to the Stationery Magistrate, Coondapur, South Kanara District.
2. Judgment of Joint Magistrate, Coondapur.
3. Judgment of Stationery Sub Magistrate, Coondapur.
4. Mangalore Government Pleader's letter dated 28th July 1936.
5. Copy of Sub Inspector's report dated 1-8-35.
6. Police Notice dated ~~29-7-36~~ d/ 29-7-35 (in original to be returned).

2. Six persons conducted unauthorised fishing on 1st May'35 and removed fish from Kotekere tank in the Coondapur Kasba of the South Kanara Dt; and were charged by the Su Inspector, Gangoli. Th Stationery Magistrate

Coondapur, found all the offenders in the above case guilty and sentenced them to pay a fine of Rs 10 each or in default to undergo simple imprisonment for fifteen days. The Joint Magistrate Coondapur has on appeal set aside the order of conviction passed by the Stationery Sub Magistrate and acquitted all the accused. The conviction and acquittal seem to be dependent on the question whether the case is cognisable and the Police records are to be depended on. It appears to me that there are conflicting views as to whether the offence is cognisable or not. The Police stated that it was not cognisable, (vide copy of Sub Inspector's report dated 1-8-35 and the Police notice dated 29-7-35) and the Government Pleader Mangalore says it is. It has been always held that offences against the amended Fisheries Act are not cognisable and hence the procedure laid down in 155 Criminal Procedure Code seems to apply. Theft of fish in the Kodi Kotekere tanks has always been suspected and this is the first occasion when it has been possible to arrest the offenders. If the Joint Magistrate's decision is faulty, it seems highly desirable to have it revised in the interests of securing the tanks against theft. A conviction in this test case will it is reported go a great way in instilling fear in the surrounding inhabitants, who aid and abet if not directly engage in the theft. The Public Prosecutor who was consulted states as the matter refers to an appeal to be filed against an order of acquittal, it must be referred to the Local Government under Section 417 Criminal Procedure Code. A copy of his letter No.C.1344/36 dated 4-9-36 is enclosed. I have the honour to enquire whether an appeal may be filed against the acquittal of the accused, if so advised by the Public Prosecutor.

I have the honour to be,
Sir,
Your most obedient servant,

B. Sambasiva Rao
Director of Fisheries.

S.A.

24/9

TO

The Stationary Sub Magistrate,

Coondapoor (South Kanara)

Offence report from the Sub Inspector of Fisheries, F.C.Yard, Gangoli, under the Indian Fisheries Act No. IV of 1897 and Madras Act No. II of 1929.

Fur. up. returned

Name & Parantage etc. of the accused.	1. Subraya Havaldar son of Dasappa of Coondapoor villag 2. Santappa Havaldar son of Dasappa of Coondapoor villag 3. Krishnappa Havaldar son of Dasappa of Coondapoor villag 4. Appi alias Paniappa Sherega son of Subraya Sheregar of Coondapoor village. 5. Mogera Koosa servant of Soopi Sahib of Coondapoor village. 6. Mogere Manja of Coondapoor village tenant of Homaver Subraya Sheregar. All theaccused are residing in Kodi village, Coondapoor Taluq.
2. Locality of offence.	Kotekere tank, situated in Coondapoor village
3. Nature of offence and under what section liable	Fishing without the written permission of the Director of Fisheries, Madras, an offence punishable under the Indian Fisheries Act No. IV of 1897 and Madras Act II of 1929
4. Name of witnesses:	1. Nagappa Sherigar, peon, Dt. Munsiff's Court, Coondapoor 2. Baster Menzes, Kasba Kodi, Coondapoor 3. Billa Govinda, Kasba Kodi, Coondapoor 4. Billa Karage, Kasba Kodi of Coondapoor Taluk 5. Mr. U. Marda, Sub Inspector of Fisheries, Calicut 6, M.R.Ry. U. Nagappa Avl. Inspector of Fisheries, Mangalore.

5. History of the case: The accused above named have conducted ~~xxxxxx~~ unauthorized fishing operation on 1-5-1935 without a lease or licence granted by Government and took fish from - the Kotakere tank situated in Coondapoor Taluk in contravention of the Indian Fisheries Act IV of 1897, and Madras Act II of 1929.

I beg that in the circumstances the accused may be summoned and dealt with according to Law.

2. The Proceedings No. 2411 1/35 dated 7-9-35 of the Director of Fisheries, Madras in original, authorising me to lodge a complaint in your Honour's court is submitted herewith. C/M not enclosed

Sd. William Kallat,
12-9-35.
Sub Inspector of Fisheries,
F.C.Yard, Gangoli.

/ True copy /

4 5

In the court of the Joint Magistrate, Coondapoor.

The 6th day of February 1936.

present: S. Venkateswaran Esq., I.C.S., Joint Magistrate.

Judgment in Criminal Appeal No. 2 of 1936

From what court the appeal is preferred: S.S.M's Court, Coondapoor.

Number of the case in that court: C.C.No. 391/35

Number of the appeal: C.A.No. 2/36

Name and description of the appellant: (1) Subraya Havaldar, (2) Santhappa Havaldar, (3) Krishnappa Havaldar, sons of Kodi Dasappa Havaldar, Coondapoor. (4) Appi a Paniappa Serigara s/o Subraya Serigara, Coondapoor, (5) Moger Koosa son of Govinda and (6) Moger Manja, N/O Bogga, Coondapoor.

The sentence and law under which it was imposed in the lower court:-- Each of the accused is sentenced to pay a fine of Rs.10/- and in default to suffer S.I. for 15 days each for an offence, punishable under section 6(5)(a) of the Indian Fisheries Act IV of 1897 read with rule 2 framed under section 6 of the said Act.

Put up Record

A on h. 3

Whether confirmed, modified or reversed, and if modified, the modification: Reversed:

3 Pol. 845 Dw (B) 13.5.29.

Date of, or on which; Presentation - Filing - Notice issued by court to appear: 15-1-36. Bail bond if appellant has been let out on bail - Appellant ordered to appear.

Hearing: 26-1-36. Order 6-2-36.

This appeal coming on for hearing before me upon perusing the petition of appeal and the record of the evidence and proceedings, and upon duly considering the same after hearing Mr. V. Ramanna Shetty vakil for the appellants and the P.S.I. Udipi contra, I do adjudge and pass the following:

pto.

Judgement:-

The appellants, six in number, have been convicted by the S.S.M., Coondapoor, under rule 2 of the statutory Rules framed by the Government of Madras under section 6 of the Indian Fisheries Act. The S.S.M. has found them guilty of illicit fishing in Kotekere tank in Coondapoor village at about 9 P.M. on 1-5-35. They have been sentenced to pay a fine of Rs. 10/- each.

2. It is alleged that P.W.1, a process server, attached to the District Munsiff's court, Coondapoor, happened at that time to be carrying manure to his field which is close to this tank. He was attracted by some noise in the tank and when he approached the tank, A. 4 to A.6 who had been dragging a fishing net on the western side of the tank took to their heels. P.W.2 was the first to arrive at the tank on hearing the alarm, raised by P.W.1. He found A1 to A3 dragging a net on the eastern side of the tank and then running away towards the north ~~eastern side of the tank and then running away towards the~~ east. P.W's 3 and 4 were the next to arrive on hearing the alarm. They saw A1 to A3 running away and heard from P.W.s. 1 and 2 the reason why. On 4-5-35, P.W.1 happened to meet, in the Sub Registrar's Office, Coondapoor, the peon working under the S.I. of Fisheries, Gangoli and as suggested by that peon, he (P.W.1) reported the matter to the S.I. at Gangoli on 5-5-35. That Officer wanted a written complaint. P.W.1 drafted Ex.A. accordingly and handed it over to the S.I. An investigation by the local Police followed and after some correspondence it was eventually decided that the Fisheries Department should itself move the S.S.M

3. I agree with the S.S.M. that the evidence of the P.W.s. 1, 2, 4 and 5 is too vague to be of any use. I cannot however agree that the evidence of the P.W.s. in this case can be safely acted upon. P.W.s. 1 to 4 gave consistent evidence in court and if that evidence stood by itself, the conviction could have been upheld. The witnesses gave a

Calendar and Judgment.

(For use in cases where there are more accused persons than one)

District of South Kanara.

Calendar of cases tried by the Stationary II Class Magistrate of Coondapoor.

Offence.	Date of Complaint.	Appearance of accused and releasee on bail.	Commencement of trial.	Close of trial.	Sentence.	Explanation of delay and remarks.
1-5-35 Kodi	15-9-35.	20-9-35	9-10-35	22-12-35	26-12-35.	

Judgment in Calendar case No.391 of 1935, on the file of the Stationary II class Magistrate of Coondapoor.

Complainant:-King Emperor - Complaint of the Sub Inspector of Fisheries F.C.Yard, Gangolly, No.102/35 dated 12-9-35.

Name of accused.	Age-years.	Father's name.
1.Subraya Havaldar.	40	Dasappa Havaldar.
2.Santhappa Havaldar.	30	Dasappa Havaldar.
3.Krishtappa Havaldar.	38	Dasappa Havaldar.
4.Appi alias Paniappa Sheregara.	20	Subraya Sheregara.
5.Moger Koosa.	22	Govinda.
6.Moger Manja.	46	Boggu.

The accused are defended by Mr.V.R.Shetty B.A.,B.L., Vakil.

Caste or religion.	Calling.	Residence.	Taluk.
1. Hindu (Ramakshathriya)	Trade.	Coondapoor Casba.	Conndapoor.
2. -do-	Ryot.	-do-	-do-
3. -do-	Ryot.	-do-	-do-
4. -do-	Trade.	-do-	-do-
5. Hindu (Mogera)	Fishing	Hungarcotta.	dipi.
6 -do-	-do-	Coondapoor Casba.	-do-

Offence:- Fishing without permissione or a license - an offence punishable under Section 6(5) (a) of the Indian Fisheries Act IV of 1897 read with rule 2 framed under Sec.6 of the said Act.

Finding:- Guilty.

Sentence:- Each of the accused is sentenced to pay a fine of Rs 10/- (ten) and in default to suffer simple imprisonment for 15 (fifteen) days.

(Sd) U.Palli Beari,
26-12-35.
Sty.Sub Magistrate.

JUDGMENT.

The Sub Inspector of Fisheries, Gangoli is prosecuting the accused for fishing in Kotekeri tank in Kodi of Goondapoor Casba on 1-5-35 without obtaining a license or permit from the Fisheries Department - an offence punishable under Sec.6(5)(a) of the Indian Fisheries Act No.IV of 1897 read with rule 2 framed under Sec.6 of the said Act.

'A' mk
G.O. 8th Dec
13.5.29

2. The accused denied the offence when the charge was read over and explained to them.

3. The prosecution case is briefly as follows:- A.1, A2 and A3 are brothers living in the same house (which is) situated close to the Kotekere tank to the north of it. A4 is the son-in-law of A1. A5 and A6 are fishermen living in Kodi. On 1-5-35 at about 9 or 9-30 P.M. while P.W.1 was carrying manure to his field adjoining Kotekere tank, he heard the noise of fish jumping in that a tank. While approaching the tank, he found A4 A5 and A6 dragging a net in the tank from north to south in knee deep water on the western side of it. He likewise saw three other persons on the eastern side of the tank dragging a net from north to south. When P.W.1 reached the tank, he saw A4, A5 and A6 ascending from the tank on the western side of it. He shouted that they were catching fish in the tank. P.W.2 who was then in the house of one Nicholas Martis, which is situated close to the tank, on hearing the outcry of P.W.1 came to the tank and found A1, A2 and A3 dragging a net in the tank on the eastern side of it. The said 3 persons getting up from the tank ran away to the north east direction. P.W.2 was standing near the notice board which is

of Fisheries regarding the illicit fishing in Kotekere tank. He held investigation into the offence on 18-5-35. The statements obtained by him P.W's 1 to 4 are Exhibits II, III, IV and V respectively. He examined the said four witnesses near the tank on 18-5-35. He did not prepare any other records, when he examined those witnesses, except the case diary. The evidence of D.W.4 and D.W.5 indicates that they are living close to the tank within ear shot distance of it and that they did not hear any noise at the tank regarding the catching of fish during any nights from the last April onwards.

6. Regarding the date and time of the occurrence, the evidence of D.W.1 and D.W's 2 to 5, is very vague and indefinite. From their evidence it is not clear whether they were present in their respective houses on 1-5-35 about about 9-30 P.M. It is not possible for any person to recollect after a lapse of nearly 8 months whether he was present in his house on a particular day and at a particular time. Under the circumstances, it cannot be said that those witnesses were present in their house the time of the occurence. From their evidence it cannot therefore be said that the accused did not commit the offence on the night of 1-5-35

7. It is urged on behalf of the accused that the evidence of P.W's 1 to 4 as given before the Court is inconstant with their statement (Exs. II to V) given before D.W.3 on 18-5-35. D.W.3 admi that he did not prepare any other records when he obtained the sta ments of P.W's 1 to 4 except the case diary. It is therefore possible that D.W.3 did not correctly record the statements of those witnesses in the case diary.

8. It is further urged that there is ill-feeling between P.W. and A4 on one hand and P.W.2 and A1 on the other, as a result of certain civil litigations and that as a result of such enmity this case has been foisted upon the accused. If that be so, it is not understood how the remaining four accused are involved in in this case, against whom no such enmity is alleged.

9. At the request of the Vakil appearing for the accused, a local inspection was held on 22-12-35 and an eye-sketch of Kotekere tank and the main houses situated close to the said tank are

given in the memo of inspection. There is a notice board planted at the southern end of the tank, which indicates that fishing is prohibited from the tank. Apart from this, there is no enclosure or wall round the tank preventing any ingress into it. The house of A1 to A3 is situated about 50 yds.to the north of the tank.- All the accused belong to fish eating class. If any persons resort to illicit fishing in the tank, it appears to me, that other persons living in the neighbourhood who happen to witness such an offence, will not make any fuss about it. They will retort by having recourse to similar fishing in the tank. Only if there is ill-feeling between such culprits and the persons who happen to witness their offence, the offence will be brought to light, as appears to be in the present case.

10. In the result, I find the accused guilty of an offence under section 6(5) (a) of the Indian Fisheries Act IV of 1897 read with rule 2 framed under Sec.6 of the said Act and convict them of it. I sentence them to pay each a fine of Rs 10/- (ten) and in default to suffer simple imprisonment for 15 days.

'A' m h. 3 3 P.O. ar. (B)

Pronounced in the open court.

Coondapoor.
26-12-1935.

Sd. U.Palli Beari,
26-12-35.
Sty.II Class Magistrate.

Appendix.

Witnesses examined for prosecution:-

1. K.Nagappa Sheregara.
2. Basta Menzes.
3. Govinda.
4. Koraga.
5. Mr.T.S.Kallat, S.I.Fisheries.

For defence:-

1. Mudura.
2. Soopi Saheb.
3. Mr.I.Soans, S.I.of Police.
4. Anthony Fernandez.
5. Fakir Saheb.

Copy of letter dated 28-7-36 from the Government Pleader, Mangalore.

Sub: Tank Fisheries - Kotekere tank - Illicit fishing.

I do not think that ~~my~~ any further action can be usefully taken in this matter. Offences falling under Sec. 6(5) and the rules framed under the Indian Fisheries Act appear to be cognisable offences under Sec. 7 of the said Act and the Sub Inspector of police had full authority to investigate into the offence on a complaint made to him and Sec. 155 of the Criminal Procedure Code quoted by the Sub Inspector of Fisheries can have no application to this case as Section 155 Cr. P.C. applies only to a non-congnisable offence. The only other irregularity is the one pointed out by the Sub Divisional Magistrate in the concluding paragraph of his judgment regarding the procedure of admitting the depositions of the witnesses before the Sub Inspector of Police, wholesale and not in the manner prescribed under Sec. 162 Cr. P.C. No useful purpose will be served in taking up this matte to the High Court, as ~~x~~ the result would be the same even after a further retrial and it is very doubtful whether even the High Court would order a retrial or the Government would agree to file an appeal against this acquittal.

~~40~~ 17

Letter C.No.1344/36 dated the 4th September 1936 from the Public Prosecutor, Madras.

Tank Fisheries - Kotekere tank - South Kanara District - illicit fishing - offence.

Ref:Your letter No.2411-I/35 dated 3-9-1936.

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As the above matter refers to an appeal to be ~~fixed~~ filed against an order of acquittal, it must be referred to the Local Government under Section 417 Criminal Procedure Code.

2. The enclosures to your letter are herewith returned.

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(2)

Copy of report dated the 1st August 1935 from the Sub Inspector, Gangoli.

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The Sub Inspector of Police, Coondapur informed me that the District Superintendent of Police, Mangalore has passed orders that the Fisheries Department should lay a complaint before the Magistrate concerned regarding the Kotekeri fishing case and that the offence is non-cognizable. I am enclosing herewith copy of letter dated 29-7-35 and the Police notice dated 29-7-35 from the Sub Inspector of Police, Coondapoor and request that necessary instructions in the matter may be given to me at an early date.

Copy not enclosed — h 19 ins

2. I have requested the Stationery Sub Magistrate, Coondapoor to keep my complaint to the Police on his file till I receive instructions in the matter from my superior officers.

S.A.

Dev. Dept.

Fisheries - Unauthorised fishing
Joint Magistrate's decision
filing of an appeal.

~~C.P. 4246/1936~~

From the D.F., No. 26/II/35 dt. 24.9.36

To AS

The case may kindly be
be sent to the Legal and Home
Dept for remarks.

RR
4.10.36

Yes
2x8.10

A waste of time to look into this.
The appellate judgment was
over 8 months ago!

Cia
5.10.38

Legal Dept

Date of receipt in the Legal Department 5.10.38

LEGAL DEPARTMENT
30.38.
6 OCT 1938

p.s Cf.

Legal Department.

e judgment of the Appellate Magistrate i
dated 6th February 1936 and thus nine months have
elapsed since it was pronounced. The time for
preferring an appeal from an order of acquittal
is six months from the date of the order - Article
157 of the Limitation Act. Government are entitled
exclude the time taken for obtaining a copy of